

### **REMARKS**

Claims 2-29 and 35-38 were pending at the time of the Office Action, claims 30-34 having been previously cancelled. All pending claims are rejected.

#### **US published application 2001/0031223 to Lang**

In the present Office Action, the Examiner has listed US published application 2001/0031223 to Lang ("Lang '223"), et al, although the published application is not cited in any rejections. Applicant respectfully notes that Lang '223 does not qualify as prior art under 35 USC 102(e). Under *In re Hilmer*, 359 F.2d 859 (CCPA 1966), Lang '223 is effective with a reference date under 35 USC 102(e) of only 21 March 2001, which is after both the US filing date (18 January 2001) and the foreign priority date (19 January 2000) claimed for the present application. Applicant notes that applicant Lang in the present application is an inventor in Lang '223.

#### **Drawing and specification objections**

The Examiner has objected to the drawings as not showing a "holder element with at least two receptacles" and has objected to the specification as not providing support for the either the "holder element" and the "at least two receptacles." Applicant respectfully traverses.

First, with regard to "at least two receptacles", the Examiner is directed to her own comments at page 7, item 10, that the term "receptacle" has been interpreted to mean "aperture" or "receiving holes." While Fig. 2 shows an illustrative embodiment with eight receptacles to receive eight instruments, the background, at the first paragraph of page 1 of the specification, indicates that the invention is for use with at least two instruments. Further support for this is found at page 8, second full paragraph. Figure 2, as described at page 13, second full paragraph, shows eight "receiving holes" 16.

With regard to "holder element", applicant respectfully notes that "holder ring" 15 corresponds to the piece that is presently cited in claim 35. While the depicted embodiment shows a round "cup-shaped" holder ring 15 (page 13, lines 21-22), applicant is not limited strictly to the depicted embodiment, as one of ordinary skill would be in possession of a broader invention than that. Particularly, the last sentence of the second full paragraph of page 13, as found on page 14, states that instruments "could

also be held in place by other holder devices, although the use of the holder ring 15 has proved to be practical.” From this, applicant respectfully asserts that there is support for the term “holder device” as now used in claim 35.

#### Claim amendments

Claims 35 and 36 are amended to change “holder element” to “holder device,” which obviates any drawing and specification objections.

#### Rejections under 35 USC §112, first paragraph

The Examiner’s objections to the specification are addressed above and are believed to be resolved there.

#### Rejections under 35 USC §103

The Examiner has repeated a rejection of claims 2-29 as being obvious over the US Patent 3,552,212 to Ohlin (“Ohlin ‘212”) in view of US Patent 5,650,122 to Harris (“Harris ‘122”) and has extended that rejection to claims 35-38.

In making the rejection (based on claim 1), the Examiner stated that Ohlin ‘212 discloses all elements of the claimed invention, except for the jet orifice, which Harris ‘122 discloses. Based upon the presentation of new independent claim 35, it is the applicant’s position that the combination of Harris ‘122 with Ohlin ‘212 no longer provides the “missing element”, so the combination rejection is no longer proper and should be withdrawn.

Directing attention to new claim 35, the “instrument holder” comprises “a holder element with at least two receptacles, each receptacle arranged to receive and hold one of the at least two instruments.” Ohlin ‘212 teaches no embodiment with a holder element with at least two receptacles, each receptacle arranged to receive and hold one of the at least two instruments.

As now claimed, claim 35 also requires a “washing device with a central opening” where “the central opening and the holder element [of the instrument holder] are maintained in co-axial relationship as the at least two instruments pass through the central opening.” While the co-axial nature of the relationship may be met by Ohlin ‘212, Ohlin ‘212 teaches a cleaning device 25 with a vertical bore 26 such that “the diameter of the bore 26 is slightly larger than the diameter of the probe portion 19, and when the probe is moved up and down into and out of the sample tubes 15, *the lower*

*probe portion 19 passes through the bore and defines an annular space with the walls of the bore*" [emphasis added]. Col. 2, lines 67-72. An "annulus" is an unambiguous term that is defined as a space between two concentric circles on a plane. Later in Ohlin '212 (at Col. 3, lines 33-45, there is discussion of the need to carefully size this annular space, so that it is neither too big nor too small. Ohlin '212 teaches no embodiment in which the space is not annular. Since only one instrument at a time could possibly pass through the central opening in the annular manner shown in to Ohlin '212, claim 35 cannot be read on Ohlin '212.

Harris '122 is relied upon by the Examiner for teaching the angularity of the jet orifices, but it does not provide the missing element of a instrument holder with at least two receptacles, where the holder element of the instrument holder is co-axially aligned with the washing device while at least two instruments pass through the central opening.

The Examiner also rejects claims 2-29 and 35-38 as obvious over US Patent 4,338,280 to Ambers ("Ambers '280"). Applicant respectfully traverses.

First, the applicant believes that the Examiner has erred in associating parts shown in Ambers '280 with required elements the claim. The Examiner identifies reference number 108 as an "instrument holder" with reference number 130 being the "removable holder element." But claim 35 also requires that the receptacles in the removable holder element "receive and hold" the instrument, which is tube 24 in Ambers '280. Reference number 130 is called a "wiper grommet" in Ambers '280 (Col. 4, line 49). While it may "receive" tube 24 through passage 132, it does not "hold" the tube. Tube 24 is clearly held by support block 108 (Col. 4, lines 18-19). By its name, wiper grommet 130 is intended to wipe the external surface of tube 24. Further support for this is provided by the material comprising wiper grommet 130 (silicone rubber of about 50 Shore A durometer, Col. 4, lines 49-50) and the close matching of the diameter of passageway 132 in grommet 130 (about 1 mm, Col. 4, line 53) with the external diameter of tube 24 (about 1 mm, Col. 4, line 23).

With regard to claim 36, the holder element 130 of Ambers '280 is not "removably seated" in an opening of the instrument holder 108. Further, orifices 182, 184 in the washing device 50 are not intended for use in washing the tube 24, as they are directed

at (and intended for washing) spherical surface 136 and socket portion 148, both of which are parts of wiper grommet 130 and not a part of tube 24. Col. 6, lines 16-20).

For at least these reasons, claim 35 is distinguished from Ambers '280 by far more than the difference of the claimed invention comprising two receptacles and Ambers '280 showing only one receptacle. For that reason, claim 35 should be allowed, along with its proper dependents.

#### Conclusion

The Applicant respectfully submits that the present application is now in condition for allowance and such action is earnestly requested. If a telephone interview is required to resolve any further issues, such a call from the Examiner is respectfully requested.

Respectfully submitted,

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